

Presentation to Montessori Teacher Education Association on Corporate Structure Issues

John R. Przepyszny

November 8, 2007



Drinker Biddle

Overview of Issue

- Corporation has three components
 - MTEA, Inc. is the corporate entity
 - IAME is its membership component
 - MACTE is its accreditation component
 - IAME and MTEA are essentially the same component

Corporate Structure

MTEA, INC

IAME

MACTE



Overview of the Issue

- Structure is result of 1997 Bylaws change
- Changes made to meet USDOE requirements
- Resulted in separation of MACTE from member association
- However – there is ongoing confusion regarding role of MACTE vis a vis MTEA/IAME

USDOE Separate and Independent Requirements



- Key component of recognition criteria
- Accrediting agency must be "separate and independent from related, associated, or affiliated trade association or organization"

USDOE Separate and Independent Requirements

- Among other things, in order to meet requirements, the following must be met:
 - Members of accreditor cannot be elected or selected by related association or its board
 - 1/7 of members of accrediting commission must be public members
 - Must implement conflict of interest guidelines
 - Dues must be paid separate from dues paid to association

USDOE Separate and Independent Requirements

- Requirements also require that accrediting agency develop and determine its own budget, with no review or consultation by related association
- Can share personnel and facilities but must pay FMV
- Joint use cannot compromise independence and confidentiality of accrediting process

USDOE Separate and Independent Requirements

- What does this mean with respect to MTEA/IAME?
 - MTEA must not involve itself in affairs of MACTE
 - MACTE must have complete autonomy with respect to:
 - Its accrediting activities
 - Its budget
 - Its personnel

1997 Bylaw Amendments

- Amended in response to USDOE concern regarding structure
 - “Commission shall be an autonomous within the corporation and shall be solely responsible for its accreditation process”
 - “Board of Directors shall have no power over MACTE Commission on matters pertaining to its separate autonomous operation”
 - MACTE allowed to act independent regarding fees, contracts, loans, checks and deposits
 - No members of MACTE board appointed or elected by board of members of MTEA/IAME

Corporate Structure and Bylaws – Current Problems

- Confusion persists notwithstanding revised bylaws
- MACTE is component of MTEA, but primary activities of corporation are accreditation
 - Association purposes appear secondary to corporation
 - MACTE holds most assets of the corporation and all the employees
 - Articles of Incorporation speak to accreditation
- Typically accreditors are smaller part of larger association
- MTEA Board cannot involve itself in primary activity of the organization—accreditation

New York Law

- New York is state of incorporation
- Under New York non-profit law:
 - MTEA Board has a fiduciary obligation to oversee affairs of corporation (Duty to Manage)
 - MTEA Board can delegate certain responsibilities, but only to its committees

New York Law

- Conflict with separate and independent requirements
- MTEA not able to oversee entire operations of corporation
- MACTE not a committee of board, nor can it be

MTEA Fiduciary Obligations (examples)

- Preparation of Audit
- Tax-exempt status of association
- Bank accounts
- Insurance

Liabilities

- MACTE not a separate corporation
- Liabilities of MACTE are liabilities of MTEA
- MTEA ultimately responsible for financial obligations of MACTE
- MTEA cannot control MACTE hiring or employee matters
- Director and Officer liability – extends to MTEA Board

What are the Options to Address Problem?

- Maintain Status Quo – with certain modifications to current structure and bylaws
- Separate Incorporation
 - MACTE or MTEA
 - MACTE and IAME – with MTEA as umbrella organization

Status Quo with Modifications to Bylaws

- Continue current structure, but update bylaws/articles to provide greater clarity of roles
 - Develop memorandum of understanding between MTEA and MACTE
 - MTEA/IAME must remain “arms length” from MACTE
- Pros:
 - Would modestly improve current structure
 - MOU may help provide better boundaries between MTEA and MACTE
 - Cons:
 - This option maintains confusing structure
 - No resolution of liability or fiduciary oversight issues

Separate Incorporation


- MACTE or MTEA separately incorporate
- Pros:
 - Completely resolves separate and independent issues, liability issues and MTEA fiduciary obligation issues
- Cons:
 - More involved and complicated solution
 - Requires agreement, new articles and bylaws, and new tax exempt application for one organization
 - Organizational concerns about severing link between MTEA/IAME and MACTE

Separate Incorporation

- Both MACTE and IAME separately incorporate and leave MTEA as umbrella organization
- Pros:
 - Completely resolves separate and independent issues, liability issues and MTEA fiduciary obligation issues
 - Making MTEA umbrella organization would maintain linkages between the organizations
- Cons:
 - Most involved and complicated solution
 - Requires agreement, new articles and bylaws, and new tax exempt application for two organizations

Next Steps

- Discussions and canvassing of MTEA/IAME and MACTE members
- May 2008 Decision by MTEA/IAME and MACTE boards
- November 2008 vote on corporate changes



Drinker Biddle & Reath LLP
1500 K Street, Suite 1100
Washington, DC 20005
202-842-8800
John.Przypyszny@dbr.com

CALIFORNIA | DELAWARE | ILLINOIS | NEW JERSEY
NEW YORK | PENNSYLVANIA | WASHINGTON, DC | WISCONSIN

© 2007 Drinker Biddle & Reath LLP | All rights reserved.
A Delaware limited liability partnership
Drinker Biddle & Reath LLP practices as Drinker Biddle Gardner Carton in Illinois and Wisconsin.



Drinker Biddle